

LAKE COUNTY BOARD of ADJUSTMENT
August 15, 2012
Lake County Courthouse Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Laverty, Paul Grinde

STAFF PRESENT: Joel Nelson, Karl Smithback, Lita Fonda

Paul Grinde called the meeting to order at 4:01 pm. Neither the chair nor the vice-chair was present.

Motion made by Sue Laverty, and seconded by Clarence Brazil, to appoint Paul Grinde as chair for this meeting. Motion carried, with 2 in favor (Sue Laverty, Clarence Brazil) and one abstention (Paul Grinde).

Motion made by Clarence Brazil, and seconded by Sue Laverty, to approve the July 11, 2012 meeting minutes. Motion carried, all in favor.

MORKEN SETBACK VARIANCE—EAST SHORE (4:03)

Karl Smithback presented the staff report. (See attachments to minutes in the August 2012 meeting file for staff report.)

Paul invited the applicant or agent to speak on behalf of the application; neither was present.

Public comment opened: None offered. *Public comment closed.*

Sue checked that the basement level was not defined. She asked where the dirt level fell with respect to the building. Karl said he was trying to determine that. What was shown on the lower part of the plans faced the lake. The applicants said it would be an exposed basement or shop. He couldn't tell if just the doorway was exposed or where the dirt level was. That was why he recommended imposing a condition. The railing was deceptive. It would be open air, and the railing was around where the cars would park. They said no water or sewer for the lower level, which would be storage and a shop. Sue said she hadn't seen that in the conditions. Karl said it would be required. They already had a guest house. Another would be prohibited. Sue mentioned that a lady who commented had the concern that this would be converted to livable space. Karl said that wouldn't be permitted under the zoning, or they would have to get a zoning conformance permit that would stipulate that. Clarence said the lower level would be storage, but a carport wasn't very applicable to storage. Did the carport have 3 sides? Karl replied the lower level of the carport would be of concrete, like a basement to the carport. The parking was at the upper level, which was exposed.

Karl highlighted the 2 letters of comment received. One was from MDT, and had no concerns. The other was from an adjacent landowner, who had concerns about living

space (which he didn't think would be an issue) and encroachment (which would be an issue). It was encroaching on the setback, rather than generally.

Clarence thought it seemed okay if the conditions~~sat~~ were met.

Motion made by Clarence Brazil, and seconded by Paul Grinde, to approve the variance with staff recommendations, conditions and findings of fact. Motion carried, all in favor.

CROCKER CONDITIONAL USE REQUEST—UPPER WEST SHORE (4:15)

Karl Smithback presented the staff report. (See attachments to minutes in the August 2012 meeting file for staff report.)

Paul brought up the easement to the road. He was unclear on that as a buildable area. Karl noted this stemmed from a policy of not getting into that. [The planners] couldn't rightly say one way or another whether or not it could be truly lawfully constructed on. There were stipulations to easement documents and there were also just ways that easements could be amended to allow for stuff like that. They usually didn't try to speak to that. He made note of it, because it seemed like that should be made note of. Karl asked Joel if he could speak further to the history, since Joel knew more about the policy. Joel repeated that they didn't get into the interpretation of those easements to figure out whether a building could be placed in an easement or on an easement. Karl added there was no easement document to refer to for this property, and there was no dedication language in the survey. It just said 16-foot road, which was likely for the subdivision. Paul checked that it was a private road. Karl said it was privately maintained. The dedication was up in the air. That was why he called it a prescriptive, which would be a constructed easement.

Donna Crocker spoke on behalf of the applicants. Donna wanted to show there was no attempt at deceit with the shed. They got the required permits as told to them. She didn't understand the placement question. Was it not where it should have been, or had they needed another permit? Karl explained that the Lakeshore Protection Regulations covered the area within 20 feet of the high water mark of Flathead Lake. The shed was farther than 20 feet back. The shed was permitted under the Lakeshore Regulations but if they wanted to put it more than 20 feet back, that was probably fine. Donna said they were told they had to put it~~in~~ 50 feet back, including the deck. It was 50 feet back. Joel referred to the permitting. They received a lakeshore permit to build it? Karl said that was the only permit for the property. Joel said it wasn't appropriate to get a lakeshore construction permit for something greater than 50 feet from the lake. Those were for 20 feet from the lake.

Donna said the shed was right at 50 feet, and was 144 square feet in size. She thought that calling it a cottage was elevating it a bit. It was a very cute storage shed. Through time, when they couldn't get it built, due to medical expenses and that sort of thing, they did end up putting a futon in there, and they stayed there on rare occasions. It had the water toys, paddles and that kind of stuff stored in it. Their intention was a storage shed.

Karl said they could have been told to get the incorrect permit for the location. The location was kind of a moot point. The bigger issue was that it was being used as living quarters. Donna said it wasn't really living quarters. She would take issue with that, but it wasn't a problem either way. They could meet the condition. Karl explained that the structure met the definition of living quarters in the zoning. That was the crux of it, and that was why they had the conditions imposed.

Donna said they were glad of the zoning restrictions. When they bought the property in 1999, they wanted to have the riparian area. They wanted the water protected and the environment to be like it was. It was very park-like. How were the regulations enforced? Lots 5, 6 and 7 all had the riparian area removed. Two of those lots were purchased after 2000, and both of those had recent permitted activities, like replacing a breakfront that resulted in taking out all of the herbage, shrubs and trees, removing any diversity in trees and leaving only Ponderosas, and taking out large trees, and they had a newly sodded lawn. The property next door cut a dirt road down to the shore. [Inaudible.] They put in wattles and hay bales but they'd been there for over a year. They took out all of the riparian and herbaceous stuff that was there naturally. Now her property looked odd, and yet they were in compliance. It was to keep the environment the way it was and to not have adverse effects on neighbors and so forth. She was concerned that there was no conformity in the conformance to the zoning.

Karl agreed that was problematic. Much came down to the fact that the planners didn't always know what people were doing all the time. He could double check on those permits to see if those had been permitted by Lake County. Sometimes people were confused and thought that they only needed permits from the Tribe when they were on the reservation. Then Lake County didn't find out that the activity went on. He said he'd figure out if that occurred. Donna thought these people clearly knew.

Donna wondered if she could put a 9-foot fence on her northern border. Karl said it couldn't be within 50 feet of the lake. If it were within 50 feet of the lake, it would fall under the standards in the Lakeshore Protection Regulations where you could have a fence but it could be no higher than 6 feet, and it had to be something where you could see through 50 %. Joel rephrased that it had to be 50 % open.

Donna said she didn't want such a fence. Nobody in the subdivision had one. In the original development was you could only take out the few trees that were where you wanted to put your house. The neighbor put a 9-foot solid cedar fence, just maybe barely 50 feet above the lake, but it ran the length of the northern boundary. It was right on the property boundary. It was put in a few months ago. Joel checked if it went within 50 feet of the lake. Donna thought it was just above that. It would constrict their view out of the basement of the house, looking down the shore. The true intent of the developer was not to have fences. She would feel like she was in a corral if someone put one in on the other side. That wasn't why she bought the property.

Karl noted that Planning couldn't enforce private covenants. A fence like this would not be permitted within 50 feet of the lake. Donna asked if this would meet the zoning for keeping the environment and habitat in place, and to not have adverse effects on neighbors and [inaudible]. Joel answered that there weren't standards for those types of fences in the zoning. They would fall under the buffer language, which said it would have to comply with the lakeshore regulations in the 20- to 50-foot buffer zone.

Jeffrey Crocker asked if this fence could be built right on the property line, or if there was a setback. Joel said there was not a setback for fences. There came a point where a fence, for example a 20-foot fence, became a structure and would have to meet setbacks, but he didn't think an 8-foot fence was going to be there. Karl said they didn't recommend putting a fence right on the property boundary for a number of reasons.

Karl said he would go to these sites when he was next in the area. The neighbors should have gotten a permit for the lakeshore activity, and he would double check to see if one existed and if so, what it was for. Jeffrey thought the lawn went right to the beach, 10 feet from the water. Donna said she would appreciate Karl's consideration of that, because it affected the whole development. Others came down and commented on the fence, that it wasn't good. The look of the area was now changed to look more marina-like. She and Jeffrey were in conformance, and they looked like the oddball. She would like fair consideration that was equitable. Jeffrey said the fence was on the southern border of the other lot, and the road that was put in was on the border of the other neighbor's property. The road went straight down from Damaskes Way into the lake. Karl said he would definitely be out there.

Donna offered to answer questions on their application.

Public comment: No other members of the public were present to comment.

Sue thought it looked good. 33% wasn't a humongous amount of coverage. Paul agreed. His only issue was with the road item, which seemed beyond the scope of the staff and Board. Donna noted it was a 16-foot easement that went with the lot next door. If they built on it, she thought they'd have to give the neighbor another easement. Donna and Jeffrey gave further comment on this.

Karl asked if [the easement] was within the neighbor's deed. He could only find it as an easement depicted on a survey, so that was a drawing of the 16-foot dedication. There was no actual document. Donna said she would assume that, but wasn't sure. Karl said it was good for them that it hadn't been counted. Sue asked if they would have a copy of the easement on their deed. They would have an easement on that same road. Donna thought she had that. She thought it was in the deed. She thought they were told that they relocated it.

Jeffrey added that the shed sat on skids.

Motion made by Sue Lavery, and seconded by Clarence Brazil, to approve the conditional use with findings of fact, staff report and the conditions as presented. Motion carried, all in favor.

OTHER BUSINESS

Next month, there were potentially 3 items.

Paul Grinde, acting chair, adjourned the meeting at 4:46 pm.